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THE METHOD Of the Proceedings

In the HOUSE of

Lords and Commons,

In CASES of

Impeachments for HIGH TREASON,

WITH

PRESIDENTS Ancient and Modern; and the Judgment of our beſt Lawyers, and Hiſtorians.

The Second Edition.

To which is prefix'd,

A SPEECH *upon the Impeachment of* Robert *Earl of* Oxford, *and the Nature of his Crimes.*

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A SPEECH upon the Impeachment of Robert *Earl of* Oxford, *and the Nature of his Crimes.*

THE Caſe before us is of the firſt Importance; the Expectation of the World is raiſed to the higheſt Pitch, and every Aſſembly is looking upon ours either with Fear or Hope, as they may be affected by our Conduct in the preſent Juncture.

For my part I don't enter into this Diſcourſe with any View of ſatisfying private Reſentment, or Intereſt, but as it concerns the Good and Safety of the Nation in general, as it preſerves Law, Juſtice, and Religion at Home, and publick Faith, and the Honour of the Nation Abroad.

As to the particular Caſe of the Noble Perſon now Impeach'd, I think we ought not to have the leaſt Scruple of going up-

on the Foot of *High Treaſon.* For let us only firſt conſider what has been done during the Tranſlations of his Miniſtry, and of which he muſt neceſſarily been either the Director or Conductor. For it is a mere Jeſt to ſuppoſe one of the firſt Miniſters of State unacquainted with the Meaſures of his Fellow-Adminiſtrators, or that he would ſit patiently, and ſuffer things of the greateſt Moment to be Conducted by Inferior Officers without his Knowledge or Concurrence.

We have then plainly ſeen a *Treaty* of Peace ſet on Foot directly contrary to the Articles of the grand Alliance, a ſeparate Treaty without any previous Intimation of it to our Allies, for them to diſcover upon what Foundation we went: It ſignifies nothing to ſay, that they were invited and exhorted to Concur with us, the very firſt Step being Wrong and Injurious to them, and as for our Invitations, they were to no purpoſe, 'till we had revealed our Meaſures, which it has been proved our Enemies knew, and which were induſtriouſly concealed from our Friends: The very Advice it ſelf to break a fundamental Article of the

Alliance,

Alliance, is a Diminution of the Dignity and Honour of the Crown, and there can be no Reaſon why one Man who invades the Prerogative with open *Arms* ſhould be thought Guilty of *High Treaſon*, and he who does the ſame to all Effects and Purpoſes without *Arms* ſhould only be Guilty of a Miſdeameanor. I would fain know if the End and Deſign is not anſwered as well by the one as the other, and if the Conſequences are not equally Dangerous, and I think the difference of the manner in doing the ſame thing, or promoting the ſame diſhonourable End, cannot alter the Nature of the Crime.

If it be objected that our Laws and Statutes are deficient, and have not apparently and *totidem verbis* declared the preſent Caſe to be *High Treaſon*, we are to conſider that does not prove it is not ſo. For ſure there is a Power of Interpretation left in the Maſters of thoſe Laws, and tho' it may ſeem hard to take away a Man's Life by ſuch Interpretations, yet ſurely they can leaſt complain of that Treatment, who have conſtrued away the ſame and poſitive Words of the Treaty of the *Grand Alliance*.

In

In ſhort, no Man can ſay it is poſſible for the Compoſers of any Laws, with all their Caution and Foreſight, to make the Words particularize every Caſe that may happen; the very Notion of it is abſurd and ridiculous, as ſuppoſing *Perfection* in human Knowledge, which is impoſſible. But then the Power which makes theſe Laws may explain them, nay it does every Day in the minuteſt and moſt trifling Caſes, and it is always reckoned ſufficient to condemn the accuſed Perſon, if his Crime comes within the general and plain Senſe of the Legiſlature. This Liberty is neceſſary to be taken at ſome times, and for this Reaſon, that it brings fewer ill Conſequences than a ſtrict Adherence to the Letter waved, and at the ſame times prevents the unneceſſary Multiplication of Laws, which while they ſeem intended for more clearneſs, often breed greater Confuſion.

If then the Caſe of this Noble *Perſon* ſeems not directly to fall within the Statute, I can ſee no Hardſhip in bringing it to the Teſt, and ſtretching our Power a little againſt the Perverter and Abuſer of all Power. Such a Conduct as this in my

Opinion

Opinion might be juſtified, but I believe that it is not the preſent Caſe, there is Law enough, plain and poſitive, which I queſtion not will be urged againſt him, and that we need not have recourſe to any new Practice. To betray the Honour of the Crown, or direct its Power to evil Purpoſes and ſo make it the Inſtrument of deſtroying it ſelf, may have been called by ſofter Terms formerly, or perhaps not have had any Name, but ſurely it deſerves that of Treaſon. If the whole Tendency of the late Treaty of Peace appears to be of this kind, we can have no Scruple of giving that Name, unleſs we are ſo overnice as that when we are convinced of the Fact, we ſhall ſtick like a parcel of Grammarians at a Name, which is a Character that I am ſure does by no means become the Dignity of this Houſe.

But I am ſenſible that it has been ſaid, that tho' the Treaſon ſo apparent, yet there may be Proofs wanting, and therefore it would reflect upon the Accuſers to bring up a Charge that they could not maintain, and make the Noble Perſons who are his

Judges

Judges think the Worſe of the whole Accuſation.

I ſay the Report ſufficiently ſhows this Noble Perſon was concerned in the Tranſactions which are moſt Criminal, and tho' we may have acted by a Deputy in ſome Parts of it where his Fears got the better of his Pride, yet there remains Evidence enough to ſupport the Charge. It will not be ſufficient to ſay, That he did not adviſe theſe Matters, for we know his Duty obliged him to remonſtrate againſt them, and prevent them, and I will defy him to bring any one Proof of that thro' the whole Courſe of his Adminiſtration.

In ſhort, I am ſo far convinced that the Charge of High Treaſon may be maintain'd againſt this Noble Perſon, that I ſhall not believe the contrary, 'till it is proved that he was not *Privy Councellor* and *Lord High Treaſurer*, during the ſpace of this inglorious, pernicious, and execrable Treaty of Peace.

The

The Method of the Proceedings in the Houſe of LORDS and COMMONS, &c.

THE Manner and Method of *Impeachments* being a Subject of Importance and Conſequence, may at this critical Juncture deſerve a ſtrict Enquiry into; and the lateſt *Precedents* being thoſe which are reckoned as a Rule or Standard for Proceedings of the ſame kind are the moſt proper to be recited, and ſet in a due Light. I have therefore thought a few Hours not ill employed in collecting ſome Inſtances of this Nature from our Hiſtorians and Journaliſts, leaving them without any other Reflections, then what they themſelves thought fit to make upon the Occaſion.

The Privilege, or Power, lodged in the *Houſe* of *Commons* to impeach upon Caſes of *High Treaſon* and *Miſdemeanours* is of great Antiquity, and is a Right that they have frequently exerciſed to the great Advantage of

their Country. Some of our *Kings* have Thought this Power a very hard reſtraint upon the *Crown*, and gave all manner of Diſcountenance to it both by their private Judgment and publick Authority, but it was ever eſteemed too valuable a Branch of the *Liberties of the People* ever to be given by the Guardians of their Rights, and ſo has been maintained with many notable Struggles in the laſt *Century*. Many evil Effects indeed may flow from a Noble Cauſe, but that muſt be the Fault of the Conducters and Managers of publick Affairs, and is not to be charged upon the Cauſe itſelf.

But it is our Buſineſs to trace things as they happened, and gave as compleat a View of them as Poſſible, and we ſhall in this Search go no higher than the Reign of King *Charles* I. when *Impeachments* were common, and almoſt faſhionable.

The Caſe of the Earl of *Strafford* being as noted a one as any, and laying in many bulky Volumes, we ſhall try to contract the Subſtance of it to a narrow Compaſs, with a ſtrict regard to the *Forms* uſed in that *Impeachment*, that being the Deſign the Writer has moſt in view, and moſt inſtructive to the Reader.

This Memorable Tryal laſted above the ſpace of a Year, for it began the Twenty Second of *March* One Thouſand Six Hundred and Forty, and continued with the interpoſition of divers Intervals for deliberation and providing Evidence, until the Twelfth of *April* One Thouſand Six Hundred and Forty One.

The

The Preparatory Matter to the Impeachment was a *Committee* for the *Iriſh* Affairs, and then the *Houſe* appointed Seven of their Members, Mr. *Pym*, Mr. *Stroud*, Mr. *St. John*, Lord *Digby*, Sir *John Clotworthy*, Sir *Walter Earl*, and Mr. *Hampden*, to prepare Matter of Conference with the Lords, and a Charge againſt the Earl of *Strafford*; the *Committee* ſoon returned, and upon the Queſtion the *Houſe* Reſolved to ſend a Meſſage to the Lords that they would Impeach the Lord *Strafford* of High Treaſon, and deſired that he might be ſequeſtred from Parliament and committed to Priſon, and that they would in ſome convenient Time bring up particular Accuſation and Articles againſt him.

Mr. *Pym* went up to the *Houſe* of *Lords* the ſame Day, and impeached him accordingly.

The Meſſage delivered by Mr. *Pym* was in the following Manner.

" My Lords, The Knights, Citizens, and " Burgeſſes, now aſſembled in the *Commons* " *Houſe* of *Parliament*, have received Informa- " tion of divers traiterous Deſigns and Practices " of a great Peer of this *Houſe*; and by Vir- " tue of a Command from them, I do here in " the Name of the *Commons* now aſſembled in " *Parliament*, and in the Name of all the Com- " mons of *England*, accuſe *Thomas* Earl of " *Strafford* Lord Lieutenant of *Ireland*, of " High Treaſon. And they have commanded " me further to deſire your Lordſhips, that he " may be ſequeſtred from the *Parliament*, and " forthwith committed to Priſon. They fur-

" ther

" ther commanded me to let you know, that " they will within a very few Days resort to " you.

The Earl being required to withdraw, it was debated by the Peers, whether he shou'd be imprison'd upon a general Accusation, without any particular Act of Treason charged against him or not? But upon the Question it was carried in the Affirmative, and he being called in, kneeled at the Bar, and after standing up, the Lord-keeper made the following Speech to him.

" My *Lord* of *Strafford*, The *House* of *Com-* " *mons* in their own Name, and the Name of " the whole Commons of *England*, have this " Day accused your Lordship to the Lords of " the Higher House of *Parliament* of High " Treason, the Articles they will in few Days " Produce; in the mean time they have de- " sired of my Lords, and my Lords have ac- " cordingly resolved; that your Lordship shall " be committed into safe Custody to the Gen- " tleman-Usher, and be sequestred from the " House, till your Lordship shall clear your- " self of the Accusations that shall be laid " against you. And thereupon he was imme- " diately taken into Custody by *James Maxwell* " Usher of the *Black Rod*.

After an Intermission of a few Days, the House resumed the main Matter on *Thursday November* the 12th 1640.

This Day the Debate began concerning Sir *George Ratcliff*, an Intimate of the Earl's when Lord

Lord Lieutenant of *Ireland*, in whom he repoſed great Truſt and Confidence, and by the Diſcourſe as if he were guilty of High Treaſon, in endeavouring to ſubvert the Fundamental Laws, and that he did join with the Earl to bring in an Army from *Ireland* into this Kingdom. But he being a Member of the *Parliament* then ſitting in *Ireland*, it was referred to a *Committee* to Conſider what Method to take to bring Sir *George Ratcliffe* before the *Houſe*. The next Day the *Houſe* Reſolved that Sir *George Ratcliffe* ſhou'd be forthwith ſent for to Anſwer the Information charged againſt him *here* of High Treaſon.

The *Houſe* then Ordered, That the *Committee* for preparing the Charge againſt the Earl of *Strafford*, being now *ſine die*, meet this Day in the Treaſury Chamber, to which *Committee* they gave Power to receive all ſuch Petitions and Papers, as may conduce to the Buſineſs; and likewiſe a Power to ſend for Records, Papers, Parties, and Witneſſes, or any other *Thing* that they ſhall think may conduce to the perfecting that Charge.

Upon this laſt Order there were many Reflections made upon the Words *any other thing*, as if that cautious Inſertion were needleſs and ridiculous.

On *Wedneſday* the Eighteenth of the ſame Month, the *Houſe* Ordered that no Member of their *Houſe* ſhou'd viſit the Earl of *Strafford* during the time of his Reſtraint, without Licence firſt obtained from the *Houſe*.

After

After Two Orders concerning the Manner of examining Witneſſes, the Articles of the Impeachment were drawn up, and carried up by Mr. *Pym* to the Lords. Then the *Lords Houſe* deſired a Conference with the *Commons* by a *Committee* of Thirty of their *Houſe*, touching the Examination of their Members in the Accuſation of the Earl of *Strafford*, and on the firſt of *December* a Conference was agreed to by the *Commons*.

Friday the Eighteenth of *January* it was Ordered, That the *Committee* appointed to draw up the Charge againſt the Earl of *Strafford* ſhall deſire to have the Depoſitions that are yet Sealed up delivered unto them, and may add and inſert ſuch particular Inſtances, and other Circumſtances, as they in their Diſcretions ſhall think fit; to the ſeveral Articles delivered in Charge againſt the Earl of *Strafford*.

On *Saturday* a Meſſage was ſent to the *Lords* to this Effect by Mr. *Pym*.

To deſire their Lordſhips that thoſe Examinations which, at the Requeſt of this *Houſe* were taken in the Caſe of the Earl of *Strafford*, by the *Lords* deputed to that Purpoſe, may be delivered to the *Commiſſioners* of the *Houſe* of *Commons* appointed to draw up the Charge againſt the Earl, that they may make uſe of them for the enlarging of their Charge, in Particularities of Evidence, according to the Clauſe of Reſolution in the concluſion of the ſaid Charge.

The

The next material Paſſage was on *Thurſday* the Eighteenth of *February*, when the *Lords* deſired a Conference by a *Committee* of both *Houſes*, concerning the ſequeſtring *Thomas* Earl of *Strafford* from his Offices. Upon this Conference the *Lords* ſent Word to the *Commons*: *Firſt*, That they wou'd admit no further uſe of Council, than the Neceſſity of the Caſe for the Earl's juſt Defence required, and wherein Council may, with the Juſtice and Honour of the *Houſe* be afforded him: *Secondly*, That there ſhould be no delay in the Proceedings.

Some of theſe Reſolutions and Orders, ſay our Hiſtorians, ſeemed harſh and ſtrange, ſhowing a Temper rather like that of Enemies, than fair Accuſers, or impartial Judges.

However, on the Twenty Fourth the Earl delivered in his Anſwer to the Articles containing above Two Hundred Sheets of Paper; the Anſwer engroſſed, and a Copy of it was delivered to the Reporters.

On *Friday* the Twenty Sixth of *February*, Ordered that the ſame *Committee* appointed to draw up the Charge againſt the *Earl* of *Strafford* formerly, with the addition of Mr. *Palmer*, Mr. *Selden*, Mr. *Whitlock*, and Mr. *Maynard*, do conſider of the Articles and the further Impeachment of *Thomas* Earl of *Strafford* by the *Commons*; and likewiſe the ſaid Earl's Anſwer to thoſe Articles and further Impeachment.

It was obſervable, that the Four Lawyers that were added to the Earl of *Strafford*'s *Committee*, made their Proteſtation of *Secrecy* openly in the *Houſe*. And Sir *George Wentworth*

upon his Proteſtation made to the *Houſe* to keep ſecret all ſuch Matters as paſſed that Day, had leave to reſort to his Brother the Earl of *Strafford*; but all the other Members of the *Houſe* were reſtrained from reſorting to him, without leave firſt obtained.

The allowance of the Earl's Brother to Viſit him, was reckoned a ſort of Grace or Favour at that time, tho' his Obligations were ſuch that it cou'd not have any Conſequence of Service to the Earl.

Friday March the Fifth, Upon Mr. *Whitlock*'s Report from the Earl of *Strafford*'s *Committee*, it was Reſolved upon the Queſtion, that there ſhall be no *Replication* put into the Earl of *Strafford*'s Anſwer in Writing, but that the further Proceedings ſhall be in the manner as is now propoſed by the *Committee*.

Mr. *Whitlock* ordered to go up with this Meſſage to the Lords.

That the *Houſe* of *Commons* have conſidered of the Earl of *Strafford*'s Anſwer, and do aver their Charge of High Treaſon againſt him, and that he is Guilty in ſuch Manner and Form as he ſtands accuſed and impeached, and that this *Houſe* will be ready to prove their Charge againſt him, at ſuch convenient time as their Lordſhips ſhall prefix, and intend to manage the Evidence by Members of their own, and deſire a free Conference with the Lords by ſelect *Committees* of both *Houſes* to conſider of ſome Propoſitions and Circumſtances concerning the Tryal.

This was agreed to by the *Lords* and 48 of the *Commons*, and 24 of the *Lords* were to make up this *Committee*. This

This *Committee* was wholly taken up in the Settlement of the manner of the Tryal, and at laſt it was conſented to thus. *Firſt*, As to the Place it ſhould be *Weſtminſter-hall*, and the King to be made acquainted with it by the Lord Great Chamberlain. *Secondly*, For Perſons, their Lordſhips agreed. That the *Houſe* of *Commons* be preſent as a *Committee* of the whole *Houſe* for this time, with the ſaving of the Right of the *Lords Houſe*, either according to Law or Parliamentary Proceedings; and that this ſhall not be drawn into Preſident on either Side hereafter. For the Third. As to management of Evidence the Lords Grant. That if at any time during the Evidence, the Council for the Earl of *Strafford* ſhall interpoſe, when the Members of the *Commons* that are appointed to manage the Evidence, are ſpeaking, they muſt of neceſſity deſiſt, becauſe it will not become them to plead againſt Council. For the Fourth agreed. For Council in managing and forcing of Evidence. The Council of the Earl of *Strafford* is not to ſpeak, nor interrupt the Matter of the *Houſe* of *Commons* 'til all the Evidence is finiſhed, and the Council is not to ſtand at the Bar, but in ſome convenient Place where they may hear, and that they may ſpeak for Matter of Law, but not for Matter of Fact, and that, not unleſs their Lordſhips ſhall ſee fitting.

Altho' every thing ſeemed now ready concerted for the Tryal, yet new Difficulties aroſe that retarded it for ſome time longer.

Upon *Saturday* the Twentieth of the ſame Month, The Earl of *Strafford* petitioned the *Houſe*; That he might make uſe of ſome of the

Members of the *Houſe*, nominated in his Petition, as Witneſſes at his Tryal, and the *Houſe* left the Members nominated in the ſaid Petition to do as they ſhould pleaſe, without giving any Offence to the *Houſe*.

On *Monday* the Twenty firſt, The Earl appeared, but the Tryal did not then begin, only the Accuſation that had been read before the Upper *Houſe*, and the Earl's Replication was read, and not the Articles of Impeachment.

They were detained 'til the Tenth of *May* in making more preparatory Orders, the moſt material were theſe following.

That his Majeſty may be moved. That the *Committees* for the Earl of *Strafford* may have the peruſal of Sir *Edward Cook*'s *Pleas* of the Crown.

That no Member of the *Houſe* ſhall ſtand in the Place appointed for the Earl of *Strafford*'s *Witneſſes*, at the time of his Tryal, unleſs they be ſuch as by the ſaid Earl, are required to be there as Witneſſes.

That no Member of the *Houſe* confer with the Earl of *Strafford* during the time of the Tryal. There were Two Things very remarkable in theſe Proceedings; The firſt was, the Earl's Petition to make uſe of ſome Members of the *Houſe* as Evidences for him, yet the *Houſe* gave no direct Order that they ſhould be obliged to attend, but left them at their Liberty to do as they pleaſed, only with a Profeſſion that it ſhould give them no Offence, and at the ſame time by another Order reſtrained any Members from conferring with him during the time of his Tryal. Which was certainly but a ſmall Encouragement for any whom

whom he ſhould have occaſion to make uſe of to appear in his behalf, or if they did, they could not do it ſo effectually, ſince there was no opportunity given of refreſhing their Memories by a Verbal Conference, ſo that they muſt Anſwer on a ſudden to any Queſtion propoſed, which Method of Reſtraint was juſtly accounted too Severe. But the Severity appeared ſtill greater; ſince the *Houſe* took a Liberty they wou'd not allow the Earl, for they themſelves deſired ſeveral both of the *Houſe* of *Lords* and the *Commons* to be preſent as Evidences for them, and a Note of their Names was given to the Serjeant of *Arms*, with a particular Order to give notice to the Members of the *Lords* to be *preſent on all Occaſions.*

Theſe are the moſt material Paſſages 'til the *Houſe* read and agreed to the Articles of High Treaſon againſt the Earl of *Strafford*, the Arguments uſed to prove him Guilty of the Contents of the *Bill* were long, and various, but the Judgment of a very Eminent *Lawyer* upon the whole is not to be omitted.

After the Earl's Charge was read, and an Introduction made by Mr. *Pym*, in which he called him the *Wicked Earl*, ſome Members of the *Houſe* of *Commons*, according to their Parts aſſigned, being Lawyers applied and preſs'd the Evidence with great Licence and Sharpneſs of Language, and when the Earl had made his Defence, replied with the ſame Liberty upon whatſoever he ſaid; taking all opportunities of bitterly inveighing againſt his Perſon: Which reproachful way of Carriage was look'd upon with ſo much Approbation, that one of the Managers (Mr. *Palmer*) loſt all his Credit

and

and Intereſt with them, and never recovered it, for uſing a Decency and Modeſty, in his Carriage and Language towards him, though the weight of his Arguments preſs'd more upon the Earl than all the Noiſe of the reſt.

The Tryal laſted Eighteen Days, in which all the haſty or proud Expreſſions, or Words, he had uttered at any time, ſince he was firſt made a Privy Counſeller; all the Acts of Paſſion or Power, that he had exerciſed in *Yorkſhire*, from the time that he was firſt Preſident there; his engaging himſelf in Projects in *Ireland*, as the ſole making of Flax, and ſelling Tobacco in that Kingdom; his billeting of Soldiers, and exerciſing Martial Law there; his extraordinary way of Proceeding againſt the Lord *Mountnorris*, and the Lord Chancellor *Loftus*; his aſſuming a Power of Judicature at the Council Table, to determine private Intereſts, and Matters of Inheritance; ſome rigorous and extrajudicial Determinations in Caſes of Plantations; ſome high Diſcourſes at the Council Table in *Ireland*; ſome caſual and light Diſcourſes at his own Table, and at publick Meetings; and laſtly ſome Words ſpoken in ſecret Council in this Kingdom, after the Diſſolution of the laſt Parliament, were urged and preſſed againſt him, to make good the general Charge, of an Endeavour to overthrow the Fundamental Government of the Kingdom, and to introduce Arbitrary Power.

The Earl behaved himſelf with great ſhew of Humility and Submiſſion, but yet, with ſuch a kind of Courage, as would loſe no Advantage, and in Truth made his Defence with all imagi-

nable

nable Dexterity, anſwering This Charge, and evading That, with all poſſible Skill and Eloquence, and though he knew not 'til he came to the Bar, upon what Parts of his Charge they would Proceed againſt him, or what Evidence they would produce, he took very little time to recollect himſelf, and left nothing unſav'd that might make for his own juſtification.

Thus far this Noble Hiſtorian; who after he has recited the particular Heads of his Defence, comes at laſt to the Point on which the Fate of the Earl turned, and by which alone it was poſſible by a fair, judicial way, or the force of any known Law to condemn him. He repreſents that Matter thus.

That which was with moſt Solemnity and Expectation urged againſt the Earl, as the Hinge upon which the Treaſon was principally to hang, was a Diſcourſe of the Earl's in the *Committee* of State (which they called the *Cabinet Council*) upon the Diſſolution of the former *Parliament*. Sir *Harry Vane*, the Secretary of State gave in Evidence, "That the King at that time calling "that *Committee* to him, ask'd them, ſince he "failed of the Aſſiſtance and Supply expected by "Subſidies, what Courſe he ſhou'd now take? "That the Earl of *Strafford* anſwered, Sir, you "have now done your Duty, and your Subjects "have failed in theirs; and therefore you are "abſolv'd from the Rules of Government, and "may ſupply yourſelf by extraordinary ways; "You muſt proſecute the War vigorouſly, You "have an Army in *Ireland*, with which you "may reduce this Kingdom.

The

The Earl of *Northumberland* being examined for the Confirmation of this Proof, remembred only, " That the Earl had ſaid you have done your " Duty, and are now abſolved from the Rules of " Government; but not a Word of the Army in " *Ireland*, or reducing this Kingdom. The Lord " Marquiſs *Hamilton*, the Lord Biſhop of *London*, " and the Lord *Cottington* being likewiſe exa- " mined, anſwer'd upon their Oaths, that they " heard none of thoſe Words ſpoken by the Earl. Theſe were the only Perſons preſent at that Debate, ſave only the *Archbiſhop* of *Canterbury*, and Secretary *Windedbank*, neither of which could be examined, or would be believed.

The Earl poſitively denied the Words; alledged much Animoſity to be in Sir *Harry Vane* towards him, and obſerved, that not one of the other Witneſſes, who were likewiſe preſent, and as like to *Remember* what was ſpoken, as the Secretary, heard one Word of the *Iriſh* Army, or reducing the Kingdom: " That if he had ſpoken theſe " Words, it could not be underſtood to be ſpoken " of *England*, but *Scotland*, of which the Diſ- " courſe was, and for which that Army was " known to be raiſed. He concluded, that if the " Words were ſpoken by him, which he expreſly " denied, they were not *Treaſon*; and if they " were *Treaſon*, that by a *Statute* made in *Ed-* " *ward* VI's. time, one Witneſs was not ſufficient " to prove it, and that there was but one.

Seventeen Days being ſpent in the whole Progreſs of the Tryal; The Earl defended himſelf with wonderful Dexterity and Ability, concluded " that if the whole Charge (in which he hoped

" he

" he had given their Lordſhip Satisfaction of his " Loyalty and Integrity, (how great ſoever his " Infirmities were) was proved, that the whole " made him not Guilty of High Treaſon; and " to that purpoſe deſired that his Learned Coun- " cil might be heard, and moſt pathetically con- " jured their Lordſhips, that for their own ſakes, " they would not out of Diſpleaſure or Disfavour " to his Perſon, create a Precedent to the Preju- " dice of the *Peerage* of *England*, and Wound " themſelves thro' his Sides. Which was good Council; and has been ſince (tho' too late) ac- knowledged to be ſo.

The next Day his Council was heard in the ſame Place to the Matter of Law. And here I cannot paſs by an Inſtance of as great Animoſity, and indirect Proſecution, in that Circumſtance of aſſigning him Council as can be given. After the *Houſe* of *Peers* had aſſigned him ſuch Council as he deſired, to aſſiſt him in Matter of Law, (which never was, or can juſtly be denied to the moſt ſcandalous Felon, the moſt inhuman Murtherer, or moſt infamous Traitor,) the *Houſe* of *Commons* took notice of it with Paſſion and Diſlike, ſome- what unskilfully, that ſuch a thing ſhould be done without their Conſent; which was no more, than that the Judge ſhould be directed by the Pro- ſecutor, in what manner to proceed and deter- mine: Others with much Bitterneſs, " inveigh- " ing againſt the Preſumption of thoſe Lawyers " that durſt be of a Council with a Perſon accu- " ſed by them of *High Treaſon*; and moving, that " they might be ſent for, and Proceeded againſt " for that Contempt. Whereas they were not

only obliged to it by the Honour and Duty of their Profeſſion; but had been puniſhable for refuſing to ſubmit to the *Lords* Orders. The Matter was too groſs to receive any publick Order, and ſo the Debate ended; but ſerved (and no doubt that was the Intention) to let thoſe Gentlemen know how warily they were to demean themſelves, leaſt the Anger of that terrible Congregation ſhould be kindled againſt them.

But truly I have not heard that it made any Impreſſion upon thoſe Perſons; it did not I am ſure upon Mr. *Lane* who argued the Matter of Law for the Earl. The Matters which were by him principally inſiſted upon, and Averr'd with ſuch Confidence as a Man uſes who believes himſelf, were theſe.

" *Firſt*, That by the Wiſdom and Tenderneſs " of Parliaments, which know that there could " not be a greater Snare for the Subject, than to " leave the Nature of Treaſon undefined, and un- " limited, all Treaſons were particularly men- " tion'd and ſet down in the *Statute* of the 25*th* " *Edward* III. *de Proditionibus*. That nothing " is Treaſon, but what is comprehended within " that *Statute*; all Treaſons before that *Statute*, " as killing the King's Uncle, his Nurſe, Piracy, " and divers others being reſtrained and taken " away by the Declaration of that Act. And that " no Words, or Actions, in any of the Articles " of the Earl of *Strafford*'s Charge did amount to " Treaſon within that *Statute*.

" *Second*, That by Reaſon of the Clauſe in that " *Statute* of declaring Treaſon in Parliament, " divers Actions were declared to be Treaſons in

" *Par-*

" *liament*, in the time of King *Richard* II. to the " great Prejudice of the Subject : It was therefore " ſpecially provided, and enacted, by a *Statute* " in the firſt Year of the Reign of King *Henry* IV. " Chapter 10*th*, which is ſtill in Force, That " nothing ſhould be declared and adjudged Trea- " ſon, but what was Ordained in that *Statute* of " the 25*th* of *Edward* III. by which *Statute* all " Power of declaring New Treaſons in *Parlia-* " *ment* was taken away ; and that no Precedent " of any ſuch Declaration in *Parliament* can be " ſhewn, ſince that time : All New Treaſons ; " made by an Act of *Parliament* in the Reign of " *Henry* VIII. being by the *Statute* of the firſt " Year of Queen *Mary*, Chapter firſt, taken away " and reſtrained to the 25*th* of *Edward* III. and " that likewiſe by another *Statute* of the firſt " Year of Queen *Mary*, Chapter Tenth, all Tryals " of Treaſons ought to be according to the Rules " of Common Law, and not otherwiſe.

" *Third*, That the Foundation upon which the " Impeachment was framed was Erroneous ; for " that (beſides that it was confeſſed on all Hands " the Laws of the Kingdom were not ſubverted) " an Endeavour to ſubvert the Fundamental *Laws* " and *Statutes* of the Realm, by Force attemp- " ted, is not Treaſon, being only made Felony " by the *Statute* of the firſt Year of Queen *Mary*, " Chapter the Twelfth, which is likewiſe ex- " pired. That Cardinal *Woolſey*, in the Thirty " Third Year of King *Henry* VIII. was indicted " only of a *Premunire*, for an Endeavour to bring " in the Imperial Laws into this Kingdom. And " that an Endeavour, or Intention to levy War,

" was made Treaſon, only by a *Statute* of the " 13*th* of *Elizabeth* (a time very Inquiſitive for " Treaſon) which expired with her Life.

" *Laſtly*, That if any thing was alledged a- " gainſt the Earl which might be penal to him, " it was not ſufficiently and legally proved; for " that by the *Statute* of the firſt Year of King " *Edward* VI. Chapter the Twelfth, no Man " ought to be arraigned, indicted, or condemned, " of any Treaſon, unleſs it be upon the Teſtimony " of Two lawful and ſufficient Witneſſes, produ- " ced in the preſence of the Party accuſed, unleſs " the Party confeſs the ſame. And if it be for " Words, within Three Months after the ſame " ſpoken, if the Party be within the Kingdom. " Whereas there was in this Caſe only one Wit- " neſs, Sir *Henry Vane*, and the Words ſpoken " Six Months before.

The Caſe being thus ſtated on the Earl's behalf, the Judgment of the *Lords*, in whom the ſole Power of Judicature was conceived to be, was by all Men expected; the *Houſe* of *Commons* having declared " that they intended to make no " reply to the Argument of Law made by Mr. " *Lane*, it being below their Dignity to contend " with a private Lawyer.

Indeed they had a more convincing way to proceed by; for the next day after that Argument, Sir *Arthur Haſlerig* (Brother in Law to the Lord *Brook*) an abſurd, bold Man, brought up by Mr. *Pym*, and ſo employ'd by that Party to make any attempt, preferr'd a Bill in the *Houſe* of *Commons*, for the Attainder of the Earl of *Strafford* of High Treaſon: It being obſerved, that

that by what the Earl had ſaid for himſelf in the Matter of Fact, and in Matter of Prudence, of the Conſequence of ſuch an extraordinary Proceeding; and by what had been ſaid for him in the point of Law; moſt ſober Men, who had been, and ſtill were, full enough of Diſlike, and Paſſion againſt the Earl, were not at all ſatisfied in the *Juſtice* of the *Impeachment*, or in the manner of the Proſecution: And therefore, that the *Houſe* of *Peers*, which conſiſted of near one Hundred and Twenty, beſides the Biſhops, and of whom Fourſcore had been conſtantly attending the Tryal, were not like to take upon them the Burthen of ſuch a Judgment as was expected.

The Bill was received with wonderful alacrity, and immediately read the firſt and ſecond time, and ſo Committed: Which was not uſual in Parliaments, except in Matters of great Concernment in the particular, or of little Importance, or Moment in the general. Thoſe who at firſt conſented, upon ſlight Information, to his Impeachment, upon no other Reaſon but (as has been ſaid before) becauſe *they were only to Accuſe*, and the *Lords* to *Judge*, and ſo thought to be troubled no more with it, being now as ready to Judge, as they had been to Accuſe, finding ſome new Reaſons to ſatisfy themſelves, of which one was, "They had gone too far to ſit "ſtill, or retire.

A Day or two before the Bill of Attainder was brought into the *Houſe* of *Commons*, there was a very remarkable Paſſage, of which the Pretence was "to make one Witneſs with divers Circum-

"ſtances

" ſtances as good as Two, tho' I believe it was directed to an End very foreign to that which was propoſed. The Words of the Earl of *Straf-ford*, by which " his endeavour to alter the " Frame of the Government, and to levy War, ſhould principally appear, were proved *ſingly* by Sir *Harry Vane*; which had been often averr'd and promiſed, ſhould be proved by ſeveral Witneſſes, and the Law was clear; " That leſs than " Two Witneſſes ought not to be received in " Caſe of Treaſon.

To make this ſingle Teſtimony appear as ſufficient as if it had been confirmed by more, " Mr. " *Pym* informed the Houſe of *Commons* of the " Grounds upon which the firſt adviſed that " Charge, and was ſatisfied that he ſhould ſuf- " ficiently prove it. That ſome Months before " the beginning of this Parliament, he had viſi- " ted young Sir *Henry Vane*, eldeſt Son to the " Secretary, who was then newly recovered from " an Ague; that they being together, and con- " doling the ſad Condition of the Kingdom, by " reaſon of the many illegal Taxes, and Preſ- " ſures, Sir *Harry* told him if he would call up- " on him the next day, he would ſhew him " ſomewhat that would give him much trouble, " and inform him, what Councils were like to " be follow'd to the Ruin of the Kingdom; for " that he had, in peruſal of ſome of his Father's " Papers, accidentally met with the Reſult of " the Cabinet Council upon the Diſſolution of " the laſt Parliament, which comprehended the " Reſolutions then taken.

" The next day he ſhew'd me a little Paper of

" the

" the Secretary's own Writing; in which was " contained the day of the Month, and the Re- " ſults of ſeveral Diſcourſes made by ſeveral " Counſellors, with ſeveral Hieroglyphicks, " which ſufficiently expreſs'd the Perſons by " whom thoſe Diſcourſes were made. The Mat- " ter was of ſo tranſcendent a Nature, and the " Council ſo prodigious, with reference to the " Common-wealth, that he deſir'd he might take " a Copy of it; which the young Gentleman " wou'd by no means conſent to, fearing it might " prove prejudicial to his Father. But when " Mr. *Pym* inform'd him, that it was of extreme " conſequence to the Kingdom, and that at a " time might probably come, when the Diſcove- " ry of this, might be a ſoveraign means to pre- " ſerve both Church and State, he was contented " that Mr. *Pym* ſhould take a Copy of it, which " he did, in the preſence of Sir *Henry Vane*; and " having examin'd it, together with him, deli- " ver'd the Original again, to Sir *Henry*. That " he had carefully kept this Copy by him, with- " out communicating the ſame to any Body, 'till " the beginning of this Parliament, which was " the time he conceived fit to make uſe of it; and " that then meeting with many other Inſtances " of the Earl's ill Diſpoſition to the Kingdom, it " ſatisfied him to move whatſoever he had moved, " againſt that great Perſon. Having ſaid thus much, he read the Paper in his Hand, in which the day of the Month was ſet down, and his Majeſty to be preſent, and ſtating the Queſtion to be " what was now to be done? Since the Parlia- " ment had refuſed to give Subſidies for the ſup- " ply of the War againſt *Scotland*. There

There were then Written, two *LL's* and a *t* over, and an *I* and an *r*, which was urged, "could "signify nothing but *Lord Lieutenant of Ireland*, "and the Words Written and applied to that "Name were, Abſolved from Rules of Govern- "ment — Proſecute the War vigorouſly — An "Army in *Ireland* to ſubdue this Kingdom— "Which was urged, to comprehend the Matter "of the Earl's Speech and Advice. That Paper, by Fractions of Words (without mentioning any form'd Speech) containing only the Reſults of the ſeveral Counſellors Advice. Before thoſe Letters which were ordered to ſignify the Lieutenant of *Ireland*, were an *A. B. C. G.* which might be underſtood to ſignify, *the Archbiſhop of Canterbury his Grace*; and at thoſe Letters ſome ſhort ſharp Expreſſions againſt *Parliaments*, and thereupon ſome Advice to the King. Next in the Paper, was an *M* with an *r* over, and an *Ho*, which were to be underſtood for Marquiſs *Hamilton*, who was *Maſter of the Horſe*; and the Words annex'd thereunto ſeem'd to be rough, but without a Supplement ſignified nothing. Then there was an *L*, and *H*, and an *A*, which muſt be interpreted *Lord High Admiral*, which was the Earl of *Northumberland*; and from that Hieroglyphick proceeded only a few Words, which implied Advice to the King, to be adviſed by his Parliament. Then there was *Ld. Cott.* (which would eaſily be believed to ſignify *the Lord Cottington*) with ſome Expreſſions as ſharp, as thoſe applied to the Lieutenant of *Ireland*.

When he had read the Paper he added; "That "tho' there was but one Witneſs directly in the "Point,

" Point, Sir *Henry Vane* the Secretary, whose " Hand-writing that Paper was, whereof this " was a Copy; yet he conceived those Circum- " stances of his, and young Sir *Henry Vane*'s " having seen those original Results, and being " ready to Swear, that the Paper read by him " was a true Copy of the other, might reasona- " bly amount to the Validity of another Wit- " ness: And that it was no wonder that the o- " ther Persons mention'd in that Writing, who " had given as bad Counsel, would not remem- " ber, for their own States, what had passed in " that Conference; and that the Earl of *Northum-* " *berland* who was the only good Counsellor in " the Pack, had remember'd some of the Words " of a high Nature, though he had forgotten " the other.

It is to be observed, that tho' this Evidence was not much insisted as of an equal force with a second Witness, yet it sufficiently shows what weak insufficient things violent Men, when whetted with a Spirit of Revenge, and a Thirst of making *Sacrifices*, will lay hold on to bring their purposes to bear, so as even to work up Arguments which bring the very Cause they prosecute, under a disgrace. Since in Cases of this Nature it always happens that every thing which is not a Proof of the Crime pretended, is thought to proceed from the Efforts of Malice which construes at its own Pleasure every Trifle into a Misdemeanour.

Upon the whole, what seems to be illegal in this Process, is the *Accumulation* of *Treason*, when every definit Article was not in it self *Treason*, yet the *whole conjunctly* was made *Treason*; nei-

ther can the taking away of the *Biſhops Votes*, and theſe of the *Lords* made ſince the *Accuſation* be juſtified, and it was not therefore without ſome apprehenſion how far the *Managers* thought they ſhould be obliged to proceed, when at the beginning they laid it down as a Rule, that their Proceedings ſhould not be drawn into a Precedent.

This Conſequence it had; that the *Biſhops* who had indiſcreetly parted with their *Votes* in one Caſe, ſoon were made ſenſible they muſt part with them in all Caſes. Neither was there any diſtinction made in the Progreſs of the *Civil War* between a *new Lord* and an *old one*, the whole *Houſe* being Voted uſeleſs by the *Commons*, and their Right of Judicature intermitted for a conſiderable Seaſon, and ſo dangerous a thing it is, to give way to the leaſt diminution of a *juſt Right* upon any Pretence, every Conceſſion being only an Argument for Violence to extort more; and it is the Buſineſs of a wiſe Man not to conſult for preſent Eaſe, but future Benefit. It would not be of any uſe to trace any other *Impeachments* during the time of the *Civil War*, ſince they were carried generally without Law, Order, or Warrant, ſufficient, and ſo we ſhall deſcend to a more regular one of the Earl of *Clarendon*.

On *July* the 10th 1663, the Earl of *Briſtol* exhibited Articles againſt the Earl of *Clarendon* of High Treaſon, and other Miſdemeanours. Upon the Exhibition of theſe Articles, the Peers order'd a Copy of them to be deliver'd to the Lord Chief Juſtice, who was, with the reſt of the Judges, to conſider whether the Charge were regularly and legally brought, and whether there was any

Treaſon

Treaſon in it or no. The Judges met and delivered in the following Anſwer.

" We conceive that a Charge of High Treaſon " cannot by the Laws and Statutes of this Realm, " be originally exhibited by one Peer againſt a- " nother unto the Houſe of Peers; and that " therefore a Charge of High Treaſon by the " Earl of *Briſtol* againſt the Lord Chancellor, " mention'd in the Order of *Reference* to us of " the 10th of this Inſtant *July*, has not been re- " gularly and legally brought in; and if the " Matters alledg'd in the ſaid Charge were ad- " mitted to be true, altho' alledg'd to be traite- " rouſly done, yet there was no Treaſon in it.

Thus the Earl was acquitted of this Charge, which was only a prelude to a more ſevere one that follow'd after, and quite cruſh'd that great Miniſter. It was moved in the *Houſe* of *Peers*, if it was not a legal Charge, it muſt be a Libel, and ſo ought to be condemn'd, and the Author of it cenſur'd. But the Earl of *Briſtol*, to excuſe himſelf, ſaid he did not intend it as a Charge, but an Information.

Soon after the Storm fell heavier upon the Earl, for the *Commons* having firſt after his Diſgrace addreſs'd the King for vacating the *Canary Patent* procured by the Earl, fell upon Debates concerning Impeaching him. Sir *Edward Seymour* charged him *vivâ voce* with many Crimes, and a Committee was appointed to reduce the Accuſation to the Heads, which was done, and reported by Sir *Thomas Littleton* on the 6th of *November*.

The Subſtance of them was,

His Deſign to raiſe a ſtanding Army, and lay

aſide all Parliament by his Advice to the King. His ſaying the King was a Papiſt. His pronouncing the *Canary* Patent, and other illegal Patents. His procuring and adviſing illegal Impriſonments of many of his Majeſty's Subjects. His Farming the King's Cuſtoms at under Rates. His receiving great Sums of Mony from the *Vintners* for freeing them from legal Payments. His unaccountable Acquiſition of a great Eſtate. His adviſing and effecting the Sale of *Dunkirk*. His betraying the King and the Nation in foreign Treaties relating to the late War. His adviſing the fatal Diviſion of the Fleet in 1666. With ſome other leſs momentous Articles.

Upon reading theſe Heads, the Queſtion was put, " Whether the *Houſe* had ſufficient Judg- " ment to Impeach. And it was carried in the Affirmative, and reſolv'd to Impeach him of *Treaſon*, and *Crimes*, and *Miſdemeanors*, Mr. *Seymour* carried up to the Lords, Impeaching according to Form, and *deſiring their Lordſhips to ſequeſter him from Parliaments and commit him to ſafe Cuſtody, and that they wou'd in a convenient time exhibit Articles againſt him.*

The Lords refuſed to comply with the *Commons* in their deſire of committing the Earl to ſafe Cuſtody for this Reaſon, " Becauſe the Accuſation " was only for Treaſon in general, without char- " ging any thing in particular. The *Commons* ordered a Committee to bring Reaſons for their Requeſt, which with Precedents to enforce them were communicated to the Lords at a free Conference, but the Lords did not think them ſufficient. Whereupon the Commons reſolv'd that

Non-

Non-commitment of the Earl, " *is* an obſtruction " to the Publick Juſtice of the Kingdom, and is " a Precedent of evil and dangerous Conſequences.

The Earl thought fit to withdraw, leaving a Paper behind him in his Vindication, which the Commons ordered to be burnt by the common Hangman. They then deſired the King to iſſue out a Proclamation for the Earl's Appearance, and taking his Tryal, but the Lords having ſent down a Bill for his *Baniſhment*, that at laſt paſſed both Houſes and received the Royal Aſſent.

In the Year 1678 the Houſe of Commons reſolved upon Impeaching the Earl of *Denby*. Articles were carried up on the 21ſt of *December* containing.

His traiterouſly encroaching to himſelf Regal Power, by treating of Matters of War and Peace with Foreign Princes, without communicating them to the Council. His endeavouring to Subvert the Conſtitution, and raiſing an Army. His hindring the meeting of the *Parliament*, and thereby alienating the King's Affections from his Subjects. His Affection for Popery. His waſting the King's Revenue. His procuring illegal Grants to himſelf.

But the Parliament being diſſolved the Matter reſted 'til a New One was called. This *Parliament* continued the Reſolution of the laſt, and ſent a Meſſage to the *Lords* to deſire the Earl's Commitment, and Sequeſtration from *Parliament*. The *Lords* ſent Word to them, that they Ordered a Bill to be brought in to Incapacitate the Earl of *Danby* for ever from all Offices, and coming into the King's Preſence. But in the mean

time

time the King granted a Pardon to the Earl under the Great Seal, the dangerous Conſequence of which was repreſented to the King by Addreſs of the *Commons*.

The *Houſe* immediately paſſed a *Bill* for the *Attainder* of the Earl, and ſent it up to the *Lords* by Sir *Robert Peyton*. The *Lords* deſired a Conference upon the Subject of the *Bill*, to which they agreed with ſome Amendments. But the *Commons* diſagreed to them, affirming, " That their Lord-" ſhips Amendments had wholly altered the Na-" ture of their Bill, and from a Bill of Attainder " had converted it into a Bill of Baniſhment? However, after a Second and Third Conference the Bill paſſed, and the Earl ſurrendred himſelf, " praying that he ſhould have Council aſſigned " him, and ſhould have Liberty to make uſe of " Records, and that his Witneſſes ſhould be ſum-" moned? Upon which he withdrew, and by Order of the *Houſe* was committed to the *Tower*.

On *April* the Twenty Fifth the Earl was brought from the *Tower* to the *Bar* of the *Lords Houſe*, where he delivered in Writing his Plea, and Anſwer to the Articles of his Impeachment. Which being read, he withdrew.

The Earl's Plea was ſent to the *Commons*, who appointed a *Committee* to Examine and Peruſe the Nature of the Plea of the Earl of *Danby*, who reported. " That they found no Precedent of a Pardon " granted to any Perſon impeached of High Trea-" ſon, depending the Impeachment. And then Reſolved, That a Meſſage be ſent to the *Lords* to deſire their Lordſhips to Demand of the *Earl* of *Danby*; whether he will rely upon, and abide by the Plea of his Pardon? Accordingly the next Day the Earl was brought to the Bar, and the Queſtion asked him by the Lord Chancellor, he craved time, and then ſaid he would abide by his Pardon. But the *Commons* voted the Pardon Illegal and Void. The Earl was recommitted to the *Tower*, where he remained 'til

February

February 12, 1683. and then upon a Motion made, and the Opinion of the Judges being for it, he was bailed, the Dukes of *Sommerset* and *Albermarle*, the Earls of *Oxford* and *Chesterfield*, his Sureties, 5000 *l.* a-piece upon Condition, that the Earl appeared in the *House* of *Lords* the next Sessions of *Parliament*, and not to depart without leave of that Court.

Thus this Case ended, tho' the Earl was again impeached some Years afterwards. On the Twenty Seventh of *April* 1695. The Earl of *Danby*, then Duke of *Leeds*, was impeached for *High Crimes* and *Misdemeanors*, he was heard in his Defence, both in the *House* of *Lords* and *Commons*. The Articles were. "For contracting and agreeing with the Merchants "trading to the *East-Indies*, or their Agents, for "5500 Guineas to procure them a Charter of Con- "firmation, and a Charter of Regulation, or by his "Agents and Servants with his Privity and Con- "sent.

His Grace had a Copy of the Articles, and put in his Answer, the *Commons* order'd a *Committee* to make a Replication, and the *House* of *Lords* and the *Duke*, often calling upon the *Commons* to make their *Articles* good, which was delay'd under pretence of the absence of a material Witness; The Duke complained much of the Hardship of his Case, and moved for the Dismission of the Impeachment, which was not consented to, but were no more heard of 'till 1701. when they were dismissed with those of the *Four Impeached Lords*.

The next *Impeachments* which deserves Consideration were those of the *Four Lords* in the Year 1701.

Upon the first of *April*, Sir *John Leveson Gowyer*, and Others, came with a Message from the *House* of *Commons*, and at the Bar of the *House* of *Lords*, Impeached the Earl of *Portland* of *High Crimes* and *Misdemeanors*, acquainting the *Lords* at the same time, that they would in due time exhibit Articles against him and make good the same.

The

The *Lords* appointed a *Committee* to inſpect their Journals concerning Proceedings of this Nature, and nothing more was done 'til the Fifteenth of the ſame Month. When the Lord *Sommers*, the Earl of *Oxford*, and the Lord *Hallifax*, were Impeached for *High Crimes* and *Miſdemeanors*, the Impeachment of the firſt was brought up by Mr. *Harcourt*, the Second by Colonel *Bierly*, and the Third by Mr. *Bruges*. All which the *Commons* promiſed to make good in due time by an Exhibition of particular Articles.

The *Houſe* of *Lords* the Day following out of a juſt Regard to their own Members, and the Privileges of their *Houſe*, upon a Motion for the ſame, Ordered a *Committee* to draw up an Addreſs to His Majeſty, which was performed, *That he would be pleaſed not to paſs any Cenſure upon the Four Noble Lords Impeached, until they are Tried upon the ſaid Impeachments, and Judgment be given according to the Uſage of Parliaments and the Laws of the Land.*

Thus the Matter ſlept 'til the Fifth of *May*, when the *Lords* ſent a Meſſage to the *Commons* to put them in Mind of the Impeachments brought up againſt the Four Lords, and that no particular Articles had as yet been Exhibited againſt them, which, after Impeachments have been ſo long depending, is due in Juſtice to the Perſons concerned and agreeable to the Methods of *Parliament* in ſuch Caſes.

Four Days after the *Commons* ſent up Colonel *Bierly*, with the Articles of Impeachment againſt the Earl of *Oxford*, who by the Command of the *Houſe*, pray'd and demanded, that the Earl ſhould give ſufficient Security to abide the Judgment of the *Houſe* of *Lords*.

A *Committee* was appointed to conſider the manner of the Delivery of the Articles, and the Security demanded, and the Earl of *Stamford* Reported, That the *Committee* upon an Inſpection of the Journal don't find any Mention of the *Commons* reading the Articles of the Bar, and as for giving Security they find none. So the Articles were read by the Clerk.

" Thus

Thus the Articles againſt the Lords *Portland* and *Somers*, which in order of Time ought to have been firſt exhibited, were poſtpon'd, and in the iſſue no Articles at all brought up againſt the the Earl of *Portland*.

The Subſtance of the Articles againſt the *Earl* of *Orford* were; His procuring of Grants, and Reverſions, and exorbitant Sums of Money, in *England* and *Ireland*, to the diminution of the Revenues of the Crown. His converting to his own Uſe Sums of Money iſſued out for the Service of the Navy, and procuring a Privy-Seal for a Diſcharge from accounting for the ſame, to the great detriment of the Navy. His diſpoſal of Prize-Veſſels without Condemnation, or judicial Proceeding. His procuring a Commiſſion for *Captain Kidd*; and other Matters relating to the Navy. His neglect of the Fleet, and connivance at the *French*. His adviſing the Treaty of *Partition*.

The Articles being read, and a Copy being delivered to the *Earl*, he did upon the 4th of *May* deliver in his Anſwer to them, being a diſtinct and explicit Reply to every thing charged againſt him by the Houſe of Commons; which Anſwer being read, and a Copy of it ſent down to the Commons, the *Earl* pray'd that Mr. *Dodd* and Mr. *Pooley* might be aſſign'd Council for him upon his Tryal, which was agreed to, and ordered according to his Requeſt.

The Lords upon ſending down the *Earl's* Anſwer, put the Commons again in mind of exhibiting the Articles againſt the other impeached

Lords, which they ſaid they were preparing, and would in a ſhort time preſent to the Houſe. This was performed by Mr. *Harcourt* in part, who brought up the Articles four Days after againſt the Lord *Somers*, renewing at the ſame time the demand of the Commons for a ſufficient *Security* to abide Judgment.

Theſe Articles contained in Subſtance, That the Lord *Somers* adviſed the *King* contrary to his Intereſt to the Partition Treaty, and ſet the Great Seal of *England* to the ſame. That he had tranſacted many other things relating to the ſaid Treaty without a ſufficient Warrant, or the Communication of it to the reſt of the then Lord Juſtices of *England*. That he had ratified under the Great Seal a ſubſequent *Treaty* to that *Partition* of equal Detriment. That he did not enter and enroll, according to the Duty of his Office, the Articles of the ſaid Treaties in the Court of *Chancery*. That he had procured Grants from the *King* for himſelf and others: That he aſſented to Captain *Kidd*'s Commiſſion. That he uſed divers unwarrantable Practices, as Lord High *Chancellor* of *England*, and made divers illegal and arbitrary Orders in Subverſion of the Laws and Statutes of the Realm.

To theſe Articles drawn out into a great length, with many formal and aggravating Circumſtances, the *Lord Somers* delivered in a full, and ſpecific Anſwer on the 24th of the ſame Month.

The Houſe of *Lords* in order to expedite the Proceedings depending before them, and prevent the

the interruption of Publick Buſineſs upon a reſearch of Precedents, gave notice to the Commons that the Earl of *Orford* had deſired a ſpeedy Tryal. And by another Meſſage renewed their Notices of the two other Impeachments depending, complaining of the Hardſhips of the noble Perſons concerned by the delay of the Commons.

In anſwer to this Meſſage, Mr. *Bromley* from the Commons acquainted the Lords, 'That in 'Anſwer to the Meſſage, the Commons have 'prepared a Replication to the Earl of *Orford*'s 'Anſwer to the Articles of Impeachment of High 'Crimes and Miſdemeanors exhibited againſt 'him, and at preſent defer bringing it up to their 'Lordſhips, becauſe in the Tryals of the ſeveral 'Impeachments now depending, the Commons 'think it moſt proper, from the Nature of the 'Evidence that will be given at the ſaid Tryals, 'to begin with the Tryal of the Impeachment of '*John* Lord *Somers*, of High Crimes and Miſ-'demeanors. And as to their Lordſhips other 'Meſſage, the Commons take it to be without Pre-'cedent and Unparliamentary; they, as Proſe-'cutors, having a Liberty to exhibit their Arti-'cles of Impeachment in due time, of which 'they who are to prepare them are the proper 'Judges; and therefore for their Lordſhips to 'aſſert, that having not yet exhibited particular 'Articles againſt *William* Earl of *Portland*, and '*Charles* Lord *Halifax*, is a Hardſhip to them, 'and not agreeable to the uſual Methods and 'Proceeding in Parliament in ſuch Caſes, does, as 'they conceive, tend to the Breach of that good

' Correſpondence, betwixt the two Houſes, which ' ought mutually to be preſerved.

The Houſe of Lords perſiſting in their Reſolution for a ſpeedy Tryal, ſent word, ' That ' they had appointed the *ninth* of *June* for the ' Tryal of the *Earl* of *Orford* upon the Articles ' ſent up againſt him, and that the Commons ' may reply if they think fit; reminding them ' once more of the remaining Impeachments.

In Anſwer, Mr. *Harcourt* brought the following Meſſage from the Commons.

' That the Commons on Conſideration of your ' Lordſhips Meſſage to them on the 31ſt of *May*, ' concerning the *Earl* of *Orford* think it their ' undoudted Right, when ſeveral Perſons ſtand ' impeached before your Lordſhips, to bring to ' Tryal ſuch of them in the firſt place as the ' Commons apprehend, from the Nature of the ' Evidence, ought firſt to be proceeded againſt; ' to the intent all ſuch Offenders may in due ' time be brought to Juſtice. And that no Day ' ought to be appointed by your Lordſhips for ' the Tryal of any Impeachment by the Com- ' mons, without ſome previous Signification to ' your Lordſhips from the Commons, of their ' being ready to proceed thereon.

' The Commons could not receive this Meſ- ' ſage from your Lordſhips without the greateſt ' Surprize, your Lordſhips Proceedings in this ' Caſe being neither warranted by Precedents, ' nor (as the Commons conceive) conſiſtent ' with the Methods of Juſtice, or with Reaſon; ' wherefore the Commons cannot agree to the

' Day

' Day appointed by your Lordſhips for the Try-
' al of the Earl of *Orford*.

' As to your Lordſhips Meſſage at the ſame
' time relating to the Earl of *Portland*, and
' *Charles* Lord *Halifax*, the Commons take the
' ſame to be without Precedent, and Unparliamen-
' tary, and conceive your Lordſhips frequent Re-
' petition thereof, in ſo ſhort a time, after the
' Commons had tranſmitted to your Lordſhips
' their Articles againſt two of the impeach'd
' Lords, and were daily preparing their Articles
' againſt the others, manifeſtly tends to the De-
' lay of Juſtice, in obſtructing the Tryals of the
' impeached Lords, by introducing Diſputes, in
' Breach of that good Correſpondence between
' the two Houſes which ought inviolably to be
preſerved.

The Lords kept ſtill fixed to the Day appointed for the Tryal of the Earl of *Orford*, and Orders were given by his Majeſty to make Preparations for it in *Weſtminſter Hall*. In the mean time upon a further Search of Precedents, they return'd Anſwer to the Commons in the following Manner.

' The Lords do think fit, upon Occaſion of
' the Meſſage of the Commons of the 31ſt of *May*,
' to acquaint that Houſe, that having ſearched
' their own Journals they do not find, that after
' a general Impeachment there has ever been ſo
' long a Delay of bringing up the particular Ar-
' ticles of Impeachment, ſitting the Parliament.
' And therefore the Lords do think, they had
' Reaſon to aſſert, that it was a Hardſhip to the
' two Lords concerned (eſpecially after this

' Houſe

' Houſe had put the Houſe of Commons in mind ' of exhibiting ſuch Articles) and not agreeable ' to the uſual Proceedings in Parliament. And as ' the Lords do not controvert what Right the ' Commons may have of Impeaching in general ' Terms, if they pleaſe; ſo the Lords, in whom ' the Judicature does intirely reſide, think them- ' ſelves obliged to aſſert, That the Right of limi- ' ting a convenient time for bringing the particu- ' lar Charge before them, for the avoiding of ' Delay, in Juſtice, is lodged in them.

' The Lords hope the Commons, on their Part, ' will be as careful, not to do any thing that may ' tend to the Interruption of the good Correſpon- ' dence between the two Houſes, as the Lords ' ſhall ever be on their Part: And the beſt Way ' to preſerve that is, for neither of the Two ' Houſes to exceed thoſe Limits which the Law ' and Cuſtom of Parliament have already eſtabliſh- ' ed.

Thus Matters ſtood as to the Difference between the two Houſes, 'till the ſixth of *June*, when Mr. *St. John* from the Commons deſired a Conference upon the Subject Matter of their laſt Meſſage; this was granted, and Mr. *Harcourt* managed on the Part of the Commons in the following Manner.

' The Commons have deſired this Conference ' upon your Lordſhips Meſſage of the 4th of ' *June*, in Order to preſerve a good Correſpon- ' dence with your Lordſhips, which will al- ' ways be the Endeavour of the Commons, and ' is at this time particularly neceſſary, in Order

' to

'to bring the impeached Lords to a ſpeedy Try-
'al. And becauſe the Meſſages which your Lord-
'ſhips have thought fit to ſend to the Commons,
'and the Anſwers thereunto, ſeem not to tend
'towards Expediting the Tryals, which the
'Commons ſo much deſire, but rather furniſh
'Matter of Diſpute between the two Houſes;
'the Commons therefore chuſe to follow the
'Methods formerly uſed with good Succeſs upon
'the like Occaſions; and for the more ſpeedy
'and eaſie adjuſting and preventing any Diffe-
'rences which have already happened, or may
'ariſe, previous to, or upon theſe Tryals, the
'Commons do propoſe to your Lordſhips, That
'a Committee of both Houſes be nominated to
'conſider of the moſt proper Way and Methods
'of proceeding on Impeachments, according to
'the Uſage of Parliament.

The Lords then ordered a Committee to inſpect the Journals, to conſider of the Manner of Proceedings upon Impeachments.

The Committee after Inſpection of the Journals, finding but very ſhort Dates between the Generality of the Impeachments, and the Days of ſtanding Tryal, ſend another Meſſage on the Ninth of *June* to the Commons to this Effect.

'In Anſwer to the Meſſage of the Houſe of
'Commons of the fourth Inſtant, the Lords ſay
'by their Meſſage on the Third, wherein they
'declare themſelves ready to proceed to the Try-
'al of any of the Impeached Lords, whom the
'Commons ſhould be firſt ready to begin with,
'they have given a full Proof of their Willing-

'neſs

'neſs to comply with the Commons in any thing 'which may appear reaſonable, in order to the 'ſpeedy determining of the Impeachmentts now 'depending; and therefore (as the Lords conceive) 'the Commons had no Occaſion to begin any Di- 'ſpute on that Head; ſo their Lordſhips are care- 'ful to decline entring into a Controverſie, which 'ſeems to them to be of no uſe at preſent.

'The Lords think themſelves obliged to aſſert 'their undoubted Right to appoint a Day for the 'Tryal of any Impeachment depending before 'them, if they ſee good Cauſe for it, without 'any previous Signification from the Commons of 'their being ready to proceed; which Right is war- 'ranted by many Precedents, as well as conſonant 'to Juſtice, and Reaſon; and their Lordſhips, 'according to the Example of their Anceſtors, 'will always uſe that Right, with a Regard to 'the equal and impartial Adminiſtration of Ju- 'ſtice, and with a due Care to prevent unrea- 'ſonable Delays.

'This being the Caſe, the Lords cannot but 'wonder, that the Commons, without any Foun- 'dation for it, ſhould make uſe of Expreſſions, 'which, as their Lordſhips conceive, have never 'been uſed before by one Houſe of Parliament to 'another, and which, if the like were returned, 'muſt neceſſarily deſtroy all good Correſpondence 'between the two Houſes.

'The laſt Part of the Commons Meſſage being 'in Effect a Repetition only of their former of 'the 31ſt of *May*, to which the Lords have al- 'ready returned a full Anſwer, their Lordſhips

'think

'think it not requiſite to ſay more, than that 'they cannot apprehend with what Colour their 'Calling upon the Houſe of Commons to ſend 'up Articles againſt the two Lords, whom the 'Commons have ſo long ſince impeached in ge-'neral Terms, can be ſaid to tend to the Delay 'of Juſtice: And therefore, as the Lords think 'the Commons ought to have forborn that Re-'flection; ſo that their Lordſhips in ſaying no 'more upon the Occaſion of this Meſſage of 'the Commons, think they have given a con-'vincing Proof of their Moderation, and of 'their ſincere Deſire of preſerving a good Cor-'reſpondence between the two Houſes, which 'is ſo neceſſary for the Publick Security, as well 'as doing Right upon the Impeachments.

The Commons replied by Mr. *Harcourt* the Day after, to this Effect:

'That the Commons, in Hopes of avoiding all 'Interruptions and Delays in Proceedings againſt 'the impeached Lords, and the many Inconve-'niencies which might ariſe thereby, having pro-'poſed to your Lordſhips at a Conference, That 'a Committee of both Houſes might be no-'minated to conſider of the moſt proper Ways 'and Methods of Proceedings on Impeachments, 'think they might juſtly have expected your 'Lordſhips Compliance with their ſaid Propo-'ſitions, inſtead of your Lordſhips Anſwer to 'their Meſſage of the 4th Inſtant, which they 'Yeſterday received: In which Anſwer of your 'Lordſhips though many Matters of Except-'tion are contained a ſuitable Reply where-

'unto would inevitably deſtroy all good Cor-
'reſpondence between the two Houſes, yet the
'Commons from an earneſt Deſire inviolably to
'preſerve the ſame, as well as to give the moſt
'convincing Proof of their Moderation, and
'to ſhew their Readineſs to bring the impeach-
'ed Lords to Juſtice, at preſent inſiſt only on
'their Propoſition, for a Committee of both
'Houſes to adjuſt and ſettle the neceſſary Pre-
'liminaries to the Tryals; particularly, *Whether*
'*the impeached Lords ſhall appear at your Lord-*
'*ſhips Bar, as Criminals? Whether, being un-*
'*der Accuſation of the ſame Crimes, they are*
'*to ſit as Judges on each others Tryals for thoſe*
'*Crimes; or can vote in their own Caſes, as*
'*we find from your Lordſhips Journals, ſince*
'*their being impeached, they have been admitted*
'*to do?* Which Matters, and ſome others, be-
'ing neceſſary to be adjuſted, the Commons
'cannot but inſiſt on a Committee of both
'Houſes, to be appointed for that Purpoſe;
'their departing from which would be giving
'up the Rights of the Commons of *England*,
'drawn by unqueſtionable Precedents, and the
'Uſages of Parliament; and making all Impeach-
'ments, the greateſt Bulwark of the Laws and
'Liberties of *England*, impracticable for the
'future.

Whatever may be thought of ſetting down theſe Matters of Difference in ſo particular manner, they are certainly of the greateſt Importance, as being Points in which two Parts of the Legaſlitive Power were ſo highly concerned upon

upon a Caſe of the firſt Conſequence; and therefore I ſhall not ſcruple being very minute in this Affair.

The Lord *Stamford* having reported again oth r Precedents from the Committee appointed to inſpect the Journals of the Houſe, it was reſolved againſt a Committee to meet a Committee of the Commons, in relation to the Impeachments. And Reaſons were ordered to be drawn up to be given at the next Conference with the Commons for the ſame Purpoſe.

The Lords in the mean Time ordered, and gave Notice to the Commons, that they had appointed the enſuing *Friday* for the Tryal of the Lord *Somers*.

Upon which a Meſſage from the Commons by Mr. *Harcourt* was brought to acquaint the Houſe of Peers of their Sentiments in this manner.

'That the Commons on *Monday* laſt receiv'd 'a Meſſage from your Lordſhips, That your 'Lordſhips had appointed the Tryal of *John* 'Lord *Somers* upon *Friday* next, upon their 'Impeachment againſt him. In which they ob- 'ſerve, your Lordſhips have not nominated any 'Place for his Tryal, though your Lordſhips 'thought fit to make that Matter, on the laſt 'Impeachment for Miſdemeanors, the Subject 'of a long Debate.

'And they cannot but take Notice, That 'your Lordſhips have taken as long a Time to 'give your Anſwer to the Commons Deſire of 'a Committee of both Houſes, delivered at a

‘ Conference on *Friday* laſt, as you are pleaſed
‘ to allow the Commons to have of the Day ap-
‘ pointed by your Lordſhips for the ſaid Tryal.

‘ Your Lordſhips appointing ſo ſhort a Day,
‘ eſpecially whilſt the Propoſition made to your
‘ Lordſhips for a Committee of both Houſes was
‘ undetermined, the Commons take to be ſuch
‘ a Hardſhip to them, and ſuch an Indulgence
‘ to the Perſons accuſed, as is not to be paral-
‘ lel'd in any Parliamentary Proceeding.

‘ The Commons muſt likewiſe acquaint your
‘ Lordſhips, That their Experience of the In-
‘ terruption of a former Tryal on an Impeach-
‘ ment for Miſdemeanors, for want of ſettling the
‘ Preliminaries between the two Houſes, obliges
‘ them to inſiſt on a Committtee of both Houſes,
‘ for preventing the like Interruption.

‘ And th y conceive it would be very prepo-
‘ ſterous for them, to enter upon the Tryals of
‘ any of thoſe Lords, 'till your Lordſhips diſco-
‘ ver ſome Inclination to make the Proceedings
‘ ther upon practicable; and therefore they
‘ think they have reaſon to inſiſt upon another
‘ Day to be appointed for the Tryal of the Lord
‘ *Somers*; and the Commons doubt not but to
‘ ſatisfie your Lordſhips at a Free Confer nce,
‘ of the Neceſſity of having a Committee of both
‘ Houſes, before they can proceed upon the
‘ Tryal.

Upon the 12th the Lords returned — ‘That
‘ in Anſwer to the Meſſage of the Houſe of
‘ Commons, of the 10th Inſtant, the Lords
‘ ſay, That although they take it to be Unpar-
‘ liamentary

'liamentary in many Particulars, yet to ſhew 'their real Deſire of avoiding all Diſputes, and 'removing all Pretence of delaying the Tryals 'of the impeached Lords, they will take No-'tice only of that Part of their Meſſage, where-'in the Commons propoſe ſome Things as Dif-'ficulties in reſpect of the Tryals; which Mat-'ters relating wholly to their Judicature, and 'to their Rights and Privileges as Peers, they 'think fit to acquaint the Commons, with the 'following Reſolutions of the Houſe of Lords.

Firſt, *That no Lord of Parliament, impeached of High Crimes and Miſdemeanors, and coming to his Tryal, ſhall be without the Bar.*

Secondly, *That no Lord of Parliament impeached of High Crimes and Miſdemeanors, can be precluded from voting on any Occaſion, except in his own Tryal.*

'Their Lordſhips further take Notice of a 'Miſtake in Point of Fact, alledged in the Meſ-'ſage of the Commons; it no way appearing 'in their Journals, that the Lords impeached 'have voted in their Caſe.

'The Lords, being well aſſured that all the 'Steps that have been taken by them in rela-'tion to theſe Impeachments, are warranted by 'the Practice of their Anceſtors, and the Uſage 'of Parliament, have reaſon to expect the Tryals 'ſhould proceed without Delay.

The Commons ſtill inſiſting upon a Free Conference, the Lords put off the Tryal of the Lord *Somers*

Somers 'till *Tuesday* the 17th of *June*, and agreed to a Conference the next Day. But the House of Commons on the same Day insisted upon a Committee of both Houses, in the following Message brought up by Mr. *St John*.

'The House of Commons find greater Reason to insist upon their Proposal of a Committee of both Houses from the two Messages received Yesterday from your Lordships, for their Ambiguity and Uncertainty do shew the Methods of former Parliaments to be the most proper way for dispatch of Business.

'The Commons have been obliged to employ that Time in considering and answering your Lordships Messages, which otherwise would have been spent in preparing for the Lord *Somers*'s Tryal, so that the Delay must be charged, where the Occasion ariseth. And the Commons having desired a Committee of both Houses to adjust the Preliminaries of the Tryals, cannot but think it strange your Lordships should come to Resolutions upon two of those Points, while the Proposal of the House is under Debate, at Conferences betwen the two Houses, the Commons having other Difficulties to propose which concern them as Prosecutors, and all future Impeachments.

'And though the Commons leave the Subject of your Lordships Resolutions, with other Things, to be debated at a Committee of both Houses; yet they cannot but observe, that your Lordships second Resolution is no direct Answer to the Commons Proposal, which was,

'*Whether*

' *Whether Peers impeached of the same Crimes*
' *shall vote for each other upon their Tryals for*
' *the same Crimes.* And the Commons cannot
' believe that any such Rule can be laid down
' in plain Terms, where there is a due Regard
' to Justice.

' And as to what your Lordships observe that
' there is a Mistake in point of Fact alledged
' by the Commons, This House may take no-
' tice of the Caution used by your Lordships in
' wording that part of your Message, for they
' know your Lordships are too well acquainted
' with the Truth of the Fact to affirm the Im-
' peached Lords did not Vote in their own Ca-
' ses; and tho' the appearing or not appearing
' upon your Lordships Journal does not make it
' more or less agreeable to the Rules of Justice,
' yet the Commons cannot but add this further
' Observation from your Lordships Journal, That
' the Impeached Lords Presence is not only re-
' corded when those Votes passed, that they also
' find some of them appointed of Committees for
' preparing and drawing up Messages and An-
' swers to the House of Commons: which
' they do not think has been the best Expedient
' for preserving a good Correspondence be-
' tween the Two Houses, or adjusting what
' will be necessary upon those Tryals. And
' therefore the Commons cannot think it agree-
' able to the Rules of Parliament, for them to
' appear at a Tryal, till all necessary Prelimina-
' ries are first settled with your Lordships.

All

All matters of difficulty seem'd now in a fair way of Conclusion, the Conference was agreed to, but at the very beginning of it a new Exception arose. Mr. *Harcourt* opened it, and argued against the Reasons of the Lords why they could not agree to a Committee of both Houses; but the Lord *Haversham*, in Answer to some part of the Arguments of Mr. *Harcourt* and Sir *Bartholomew Shower*, used some Expressions at which the Commons taking Exceptions, abruptly broke up the Conference. As the Managers were withdrawing the Lord Steward spoke to this Effect, 'That he hoped that they 'would not think that that Lord had any Au- 'thority from the House of Lords, to use any 'such Expressions towards the Commons.

The Commons upon this supposed Indignity offered to them came to these warm Resolutions: That the Lord *Haversham* had at the free Conference utter'd most scandalous Reproaches, and false Expressions, highly reflecting upon the Honour and Justice of the House of Commons, and tending to make a Breach in the good Correspondence between the Lords and the Commons, and to the interrupting the Publick Justice of the Nation, by delaying the Proceedings on Impeachments: And that he should be charged before the Lords for the Words he spoke, who are desired to proceed in Justice against him, and inflict such Punishment upon the said Lord as so high an Offence deserves. Sir *Christopher Musgrave* carried the Charge and Resolution to the Lords, who immediately invited the

the Commons to renew the free Conference, and the next day by another Meſſage informed them that they had appointed a Committee to ſtate the matter of the Free Conference, and invited again the Commons to proceed immediately upon the Subject matter of the laſt in a preſent Free Conference. But the Commons reſolved that it was not conſiſtent with their Honour to renew the Conference until they had received Reparation by their Lordſhips doing Juſtice upon the Lord *Haverſham* for the late Indignity offered to the Houſe of Commons.

On the ſame Day Mr. *Bruges* carried up the Articles againſt *Charles* Lord *Halifax*, which were,

That he had obtain'd and got paſs'd a Grant to *Thomas Railton* Eſq; in Truſt for himſelf, amounting to 13000*l.* out of the forfeited Eſtates in *Ireland*, accruing to his Majeſty from Attainders, Outlawries, *&c.* That he had not repaid into the Exchequer in *Ireland* the Sum of 1000*l.* which he had actually received out of the Profits of the above mentioned Grant, contrary to a late Act of Parliament. That in the Time of an expenſive War, he not only adviſed the paſſing others, but obtained and accepted ſeveral beneficial ones for himſelf, which was a moſt notorious Abuſe of his Majeſty's Goodneſs. That he procured a Grant to his Brother *Chriſtopher Mountague*, of the Place and Office of the Auditor of the Receipt and Writer of the Tallies, in Truſt for himſelf; ſo that he the ſaid Lord was in effect, at the ſame Time, one

of the Comiſſioners of the Treaſury, Chancellor of the *Exchequer*, and Auditor of the Receipts; which Offices were manifeſtly inconſiſtent, and ought to have been a Check to each other. That he adviſed his Majeſty to the Treaty of the *Partition* of the *Spaniſh* Monarchy.

To theſe Articles the Lord *Halifax* returned an ample and particular Anſwer: And in the mean Time the Lords ſent a Meſſage to the Commons of their having appointed *Tueſday* the 17th of *June*; and at the ſame Time communicated to them the Notes and Rules to be obſerved at the Tryal. But the Commons were ſtill unſatisfied, and gave their Reaſons the next Day, why they could not proceed to the Tryal of the Lord *Somers*. Mr. *Harcourt* delivered them thus:

'The Commons in this whole Proceeding 'againſt the impeached Lords, have acted with all 'imaginable Zeal to bring them to a ſpeedy Tryal; 'and they doubt not but it will appear, by com- 'paring their Proceedings with all others upon 'the like Occaſions, that the Houſe of Com- 'mons have nothing to blame themſelves for, 'but that they have not expreſſed the *Reſent- 'ments their Anceſtors* have juſtly ſhewed upon 'much leſs Attempts which have been made up- 'on their Power of Impeachments.

'The Commons on the 31ſt of *May* acquaint- 'ed your Lordſhips, that they thought it pro- 'per from the Nature of the Evidence, to pro- 'ceed in the firſt Place upon the Tryal of the Lord

' Lord *Somers*: Upon the firſt Intimation ſome
' Days afterwards, That you would proceed to
' the Tryal of the impeached Lords, whom the
' Commons ſhould be firſt ready to begin with,
' notwithſtanding your Lordſhips had before
' thought fit which Impeachment ſhould be firſt
' tried, and affix a Day for ſuch Tryal without
' conſulting the Commons, who are the Proſe-
' cutors.

' The Commons determine to expedite the
' Tryals to the utmoſt of their Power, in Hopes
' of attaining that End; and for the more ſpeedy
' and eaſie adjuſting and preventing any Differen-
' ces which had happened, or might ariſe previ-
' ous to or upon theſe Tryals, propoſed to your
' Lordſhips at a Conference, the moſt Parlia-
' mentary and effectual Method for that Pur-
' poſe, and that which in no manner intrench'd
' upon your Lordſhips Judicature; That a
' Committee of both Houſes ſhould be nomi-
' nated, to conſider of the moſt proper Way
' and Methods of proceeding upon Impeach-
' ments, according to the Uſage of Parliament.

' In the next Meſſage to the Commons upon
' *Monday* the 9th of *June*, your Lordſhips
' thought fit, without taking the leaſt Notice of
' this Propoſition, to appoint the *Friday* then
' following for the Tryal of the ſaid Lord *Somers*;
' whereunto, as well as to many other Meſſages
' and Proceedings of your Lordſhips upon this
' Occaſion, the Houſe of Commons might have
' juſtly taken very great Exceptions; yet as an
' Evidence of their Moderation, and to ſhew

'their Readineſs to bring the impeached Lords
'to ſpeedy Juſtice, the Commons only inſiſted
'on their Propoſition of a Committee of both
'Houſes to ſettle and adjuſt the neceſſary Pre-
'liminaries to the Tryal; particularly, Whether
'the Impeached ſhould appear on their Tryals
'at your Lordſhips Bar as Criminals? Whether
'being under Accuſations of the ſame Crimes,
'they ſhould ſit as Judges on each others Tryal
'for thoſe Crimes, or ſhould vote in their own
'Caſes, as is notorious they have been permit-
'ted by your Lordſhips to do, in many Inſtances
'which might be given; to which Particulars
'your Lordſhips have not yet given a direct
'Anſwer, though put in Mind thereof by the
'Commons.

'Your Lordſhips at a Conference having of-
'fered ſome Reaſons why you could not agree
'to a Committee of both Houſes to adjuſt the
'neceſſary Preliminaries, the Commons there-
'upon deſired a Free Conference, and your
'Lordſhips agreed thereunto; at which 'tis
'well known to many of your Lordſhips, who
'were then preſent, what moſt ſcandalous Re-
'proaches and falſe Expreſſions, highly reflect-
'ing upon the Honour and Juſtice of the Houſe
'of Commons, were uttered by *John* Lord *Ha-*
'*verſham*, whereby the Commons were under
'a Neceſſity of withdrawing from the ſaid Free
'Conference; for which Offence the Commons
'have, with all Regard to your Lordſhips, pray-
'ed your Lordſhips Juſtice againſt the Lord *Ha-*
'*verſham*, but have as yet received no manner of
'Satisfaction.

'The

' The Commons reſtrain themſelves from enu-
' merating your Lordſhips very many irregular
' and unparliamentary Proceedings upon this Oc-
' caſion, but think it what they owe to publick
' Juſtice, and all the Commons of *England* whom
' they repreſent, to declare ſome few of thoſe
' Reaſons, why they peremptorily refuſe to pro-
' ceed to the Tryal of the Lord *Somers* on the
' 17th of *June*.

' *Firſt*, Becauſe your Lordſhips have not yet
' agreed that a Committee of both Houſes ſhould
' be appointed for ſettling the neceſſary Prelimi-
' naries; a Method never until this time denied
' by the Houſe of Lords, whenſoever the Com-
' mons have thought it neceſſary to deſire the
' ſame.

' *Secondly*, Should the Commons (which they
' never will do) be contented to give up thoſe
' Rights which have been tranſmitted to them
' from their Anceſtors, and are of abſolute Ne-
' ceſſity to their Proceedings on Impeachments;
' yet whilſt they have any Regard to Publick
' Juſtice, they never can appear as Proſecutors be-
' fore your Lordſhips, 'till your Lordſhips have
' firſt given them Satisfaction, that the Lords
' Impeached of the ſame Crimes ſhall not ſit as
' Judges on each others Tryal for thoſe Crimes.

' *Thirdly*, Becauſe the Commons have as yet
' received no Reparation for the great Indignity
' offered to them at the Free Conference by the
' Lord *Haverſham*, the Commons are far from any
' Inclination, and cannot be ſuppoſed to be under
' any Neceſſity of delaying the Tryal of the Lord
' *Somers*:

' *Somers*: There is not any Article exhibited ' by them in Maintenance of their Impeachment ' againſt the Lord *Somers*, for the Proof where- ' of they have not full and undeniable Evidence, ' which they will be ready to produce, as ſoon as ' your Lordſhips ſhall have done Juſtice upon the ' Lord *Haverſham*; and the neceſſary Prelimi- ' naries in order to the ſaid Tryal, ſhall be ſet- ' tled by a Committee of both Houſes.

' The Commons think it neceſſary to obſerve ' to your Lordſhips, that moſt of the Articles ' whereof the Lord *Somers* ſtands impeached, ' will appear to your Lordſhips to be undoubted- ' ly true, from Matters of Record, as well as by ' the Confeſſion of the ſaid Lord *Somers*, in his ' Anſwer to the ſaid Articles; to which the Com- ' mons doubt not but your Lordſhips will have ' a due Regard, when his Tryal ſhall regularly ' proceed.

The Lords ſent their Anſwer to this Meſſage, on *Friday*, *June* 20, in theſe Words.

' The Lords in Anſwer to the Meſſage of the ' Commons of the 17th Inſtant, ſay, The only ' true Way of determining which of the two Houſes ' has acted with the greateſt Sincerity, in Order ' to bring the Impeached Lords to their Tryals, ' is to look back upon their reſpective Proceed- ' ings.

' The Lords do not well underſtand what the ' Commons mean by that *Reſentment* which ' they ſpeak of in their Meſſage: Their Lord- ' ſhips own the Houſe of Commons have a Right ' of Impeaching: And the Lords have undoubted

' Power

'Power of doing Juſtice upon thoſe Impeach-
'ments, by bringing them to Tryal, and con-
'demning or acquitting the Parties in a reaſon-
'able time. This Power is derived to them from
'their Anceſtors, which they will not ſuffer to
'be wreſted from them by any Pretences whatſo-
'ever.

'Their Lordſhips cannot but wonder that the
'Commons ſhould not have propoſed a Commit-
'tee of both Houſes much ſooner, if they thought
'it ſo neceſſary for the bringing on the Tryals;
'no Mention being made of ſuch a Committee
'from the firſt of *April* to the ſixth of *June*, al-
'though during that Interval their Delays were
'frequently complained of by the Houſe of Lords.

'The Manner in which the Commons demand
'this Committee, the Lords look upon as a direct
'invading their Judicature; and therefore as
'there never was a Committee of both Houſes
'yielded to by the Lords in caſe of any Impeach-
'ment for High Crimes and Miſdemeanors; ſo
'their Lordſhips do inſiſt, that they will make
'no Precedent upon this Occaſion. Many Im-
'peachments for Miſdemeanors have in all Times
'been determined without ſuch a Committee:
'And if now the Commons think fit, by an un-
'precedented Demand, to form an Excuſe for not
'proſecuting their Impeachments, it is demon-
'ſtrable where the Obſtruction lies.

'As to the Preliminaries which the Commons
'mention in particular, as proper to be ſettled at
'ſuch a Committee, they have received the Re-
'ſolution of the Houſe of Lords therein by their

'Meſſage

‘ Meſſage of the 12th Inſtant, from which (be-
‘ ing Matters entirely relating to their Judica-
‘ ture) their Lordſhips cannot depart.

‘ As to the laſt Pretence the Commons would
‘ make to ſhelter the delaying of the Tryals, from
‘ ſome Expreſſions which fell from the Lord *Ha-*
‘ *verſham* at the free Conference, at which Of-
‘ fence was taken, their Lordſhips will only ob-
‘ ſerve:

‘ *Firſt*, That they have omitted nothing which
‘ might give the Commons all reaſonable Satiſ-
‘ faction, of their Purpoſe to do them Juſtice in
‘ that Matter, ſo far as is conſiſtent with doing
‘ Juſtice to that Lord; and alſo preſerve all good
‘ Correſpondence with them; as appears by the
‘ ſeveral Steps they have taken.

‘ *Secondly*, That this Buſineſs has no Relati-
‘ on to the Tryal of the Impeached Lords, and
‘ therefore their Lordſhips cannot imagine why
‘ the Commons ſhould make Satisfaction and Re-
‘ paration againſt the Lord *Haverſham*, a neceſ-
‘ ſary Condition for the going on with the Tryals,
‘ and at the ſame time find no Difficulties in pro-
‘ ceeding on other Buſineſs.

The Lords however proceeded to the Tryal of the Lord *Somers* on the Day appointed; the Commons not appearing, he was acquitted, and the Impeachment diſmiſſed. Whereupon the Commons made the following Remonſtrance.

‘ That the Lords have refuſed Juſtice to the
‘ Commons upon the Impeachment againſt the
‘ Lord *Somers*, by denying them a Committee of
‘ both Houſes which was deſired by the Commons

‘ as

' as the proper and only Method of settling
' the necessary Preliminaries, in order to the
' proceeding to the Tryal of the said Lord *Somers*,
' to effect; and afterwards by proceeding to
' a pretended Tryal of the said Lord, which
' could tend only to protect him from Justice by
' Colour of an illegal Acquittal. Against which
' Proceeding of the Lords, the Commons do so-
' lemnly protest, as being repugnant to the Rules
' of Justice, and therefore null and void. That
' the House of Lords, by the pretended Tryal of
' *John* Lord *Somers*, have endeavour'd to o-
' verturn the Right of Impeachments lodg'd in
' the House of Commons by the ancient Consti-
' tution of this Kingdom, for the Safety and Pro-
' tection of the Commons against the Power of
' great Men; and have made an Invasion upon
' the Liberties of the Subject, by laying a Foun-
' dation of Impunity to the greatest Offenders.
' That all the ill Consequences which may at
' this time attend the Delay of the Supplies gi-
' ven by the Commons, for preserving the Pu-
' blick Peace, and maintaining the Ballance of
' *Europe*, by supporting our Allies against the
' Power of *France*, are to be imputed to those
' who to procure an Indemnity for their own
' enormous Crimes, have used their utmost
' Endeavours to make a Breach between the
' two Houses.

The Lords upon this gave Notice to the Commons that they had dismissed the Lord *Somers*'s Impeachment, and would proceed upon the Lord *Orford*'s the *Monday* following. Upon which

the Commons ordered, ‘ That no Member ſhould ‘ preſume to appear on *Monday* next, at the pre- ‘ tended Tryal of the Earl of *Orford*, upon Pain ‘ of incuring the utmoſt Diſpleaſure of the Houſe.

The Lords proceeded in the ſame Manner, diſmiſſing all the Impeachments, and acquitting the impeached Lords, not without ſome ſharp Votes againſt the Commons.

What was moſt remarkable in theſe Proceedings was, That all the Lords who put in their Anſwers to the Articles, denied the *Adviſing* or *Promoting* the *Partition Treaty*.

To which we ſhall add a Remark of the *Learned Doctor Kennet*'s upon the whole Conduct of this Affair.

That his Majeſty could not but be very uneaſie at this ſevere Dealing with his Councils and his Miniſters; when he knew the Error, if any, was a *Miſtake* of *Judgement only*, and *that rather of his own, than of any employed by him.*

P. S.

THERE being ſomething material in the Tryal of the Lord *Preſton*, 1690, tho' it does not ſtrictly come within the Title of my Deſign, I have thought fit to add a few Paſſages of it, eſpecially ſince the Matter of *Correſponding* with *Enemies*, and the Force and Validity of a Man's *Hand-writing* in Point of Evidence, is determined here by Law; which may ſhow how far

far Crimes of the like Nature may meet with the ſame Condemnation.

The Indictment was for a Correſpondence with *France*, and the late King *James*, contrary to the known Laws of the Land; for endeavouring to go to *France*, in order to compleat and finiſh ſome Schemes againſt the Government, which were contained in ſeveral traiterous Papers found upon him when apprehended.

The Proofs were plain, firſt of hiring a Boat to go to *France*, and giving Rewards to conceal the real Deſign by a Pretence of being bound to *Flanders*; all ſufficiently atteſted upon Oath by the Maſter of the Veſſel, and other Evidences.

Captain *Billop*, who was the Perſon who ſeiz'd the Lord *Preſton*, with others in their Voyage, gave an Account that according to his Commiſſion, he overtook them at *Graveſend*; that he ſearched the Lord *Preſton*, and took away ſome Papers from him, as alſo Mr. *Aſhton*, one of his Lordſhip's Companions, and took away more Papers with a Piece of Lead fix'd to them. That the Priſoner uſed ſeveral Arguments with him to gain the Papers out of his Power, but that he was obſtinate to all his Importunities.

That he brought the Packet to my Lord *Nottingham*, whom he ſaw read part of them, and from thence to my Lord Preſident of the Council. The Earl of *Nottingham*, the Marqueſs of *Camarthen*, and the Lord *Sidney* ſwore to their reſpective Reading and Marking the Papers, which Marks were owned by them in Court; but Cap-

tain *Billop* only marking the Papers he read could atteſt no more; at which the Lord *Preſton* made ſome frivolous Exceptions. The Papers were read, the firſt whereof being very remarkable, and bearing ſome Similitude perhaps to latter Cabals, we ſhall inſert at Length.

' The Reſult of a Conference between ſome ' Lords and Gentlemen, both *Tories* and *Whiggs*, ' in which it was undertaken to prove the Poſſi- ' bility and Method of reſtoring, by a *Fr.* Power, ' without endangering the Proteſtant Religion, and ' Civil Adminiſtration, according to the Laws ' of this Kingdom.

1. *F.* muſt either oblige or conquer us: If the laſt, he will find few Helps here, but a bloodyer Reſiſtance than ever the *Romans*, *Saxons*, or *Normans* found, it being incredible how unanimous and obſtinate that very Thought renders the People; ſo that it may make us a Heap of Ruin, but no Nation that can ever help or import any thing to *F.*

2. If *K. L.* deſire to oblige us, and make the Work eaſie, that he may be at Leiſure to ply the *Empire* or *Italy*, or to have an *Advantageous Peace*, he muſt take off the frightful Character we have of him, and ſhew us he has no ſuch Deſign, as returning our offended *K.* a Conqueror upon us; but that he can, and will be our Friend and Mediator; upon which Terms he will find that many Lords and Gentlemen will ſpeedily ſhew themſelves to his Satiſ-

tisfaction; especially if he makes haste, and loses no approaching Opportunity.

3. If he incline to this sort of Sense, he must over-rule the Bigotry of *St. G.* and dispose their Minds to think of those Methods that are more likely to gain the Nation; for there is one silly thing or other daily done there that comes to our Notice here, which prolongs what they so passionately desire. The Methods thought upon are these;

First, To prevent dangerous and foolish Intelligence, by forbidding all in that Court to write any News hither; and that *K. J.* only have his Correspondents by whom to hear from and speak to People here; since Letters so often miscarry, and are filled with nothing but what we should not hear; and what we have are Arguments for the most part against the *K*'s Restoration.

Secondly, Since there is a great Body of Protestants that never defected; and that many Thousands are returning; and that they are the natural Weight and Power of these Kingdoms, by the having the Heads, Hands, and Wealth of their Side, to the Odds and Advantage of at least two hundred Protestants to one Catholick; the *K.* may think of nothing short of a Protestant Administration, nor of nothing more for the Catholicks than a legal Liberty of Conscience; for much *e mutt* is against all other Notions, to which all private Passions and artificial Frames in Government must yield or break. He may

reign

reign a Catholick in Devotion, but he must reign a Protestant in Government. *Cromwell* could not, yet on a broader Bottom, with a victorious Army, subsist or keep what he had got.

Thirdly, He must give us a Model of this at *St. G.* by preferring the Protestants that are with him above the Catholicks; one being loyal upon less Ties of Interest, and to tell the Nation here what they are to hope for when he comes.

Fourthly, He must give Encouragement to Lords and Gentlemen here to come to him, at least Seven or Nine for standing Council; which will make us here think he is in some Degree ours again, and that we have a Relation to him, and some Interest and Share in him by the Men of Quality of our own Religion that are with him. This will incomparably facilitate the Matter here; nor will they when they come, come empty and in their own Names, which is still better, and will be more satisfactory here.

Fifthly, To induce this, *English* Protestants should be encouraged by an Edict of Liberty from the K. of *F.* to have Chappels at their own Costs, in which to worship God after their respective ways; by which that *K.* will make us reflect upon his Conduct towards the *Hugonots* rather to flow from the Hazard he thought himself in by their *Antinomian* and Resisting Principles, than a Desire of Persecution.

Lastly, All other requisite Measures depending upon the Acceptance this finds, an Answer hereunto is impatiently desired by those that have dis-

diſcourſed the *K*'s Buſineſs to this Maturity. So end'd with an unanimous Conſent, both *Tories* and *Whiggs*, upon this Occaſion, that are in a way of cloſing in his Intereſt.

Then another Paper was read, being the ſame with this; only in the firſt Blank there was written *K. J.* in the firſt Paragraph (*France*) twice, in the Third Paragraph (St. *Germains*) in the Fifth (*Mathemat.* for *Much e Mutt.*) the reſt are plain and obvious and need not be ſupplyed. The Lord *Preſton* ſaid he never ſaw theſe Papers in his Life.

There were nineteen other Papers more read and atteſted as taken from him. Then Mr. *Bland*, Mr. *Townſend* and Mr. *Warr* (who were acquainted with my Lord's Hand) ſwore that they believed the *Three* laſt Papers to be the Lord *Preſton*'s Hand.

My Lord in his Defence ſaid, That the Treaſon was not proved to be done in *Middleſex*, as it was laid in the Indictment; nor that the Papers were ſufficiently proved to be his, Similitude of Hands being no Proof.

To which the Court reply'd, That his taking Boat in *Middleſex*, at *Surrey-Stairs*, was an Overt-Act of the Treaſon, and whether that Act had been proved, muſt be left to the *Jury*.

The Lord Chief-Juſtice *Holt* ſumm'd up the Evidence; and then the Lord *Preſton*, (tho' out of Courſe) having Leave, obſerved to the Jury, how that he was a Proteſtant of the *Church* of *England*, that he hoped this Proof could amount

mount to no more than a *Presumption*, that his Design of going beyond Sea, was only to be quiet, he having been imprison'd here.

The Court reply'd, That he was took up only in Times of Danger; and that he had shewed his Dissatisfaction with the present Government; and that was to be left to the Jury to consider, if any one can design innocently to go into *France*, (a known, declared Enemy's Country, at open War with the Government) with such Papers, and in such Manner.

Then the Jury withdrew for half an Hour, and brought the Prisoner in *Guilty*. Upon which the Lord Chief Justice *Pollexfen* told them; 'That he thought they had done according to 'their Evidence; and tho' it were a hard Case 'upon particular Persons that had brought 'themselves into those Inconveniencies; yet it 'was necessary that Justice should have its Course, 'or else there would be no longer living for any 'Man, in any Society or Government.

THE

THE CONCLUSION.

FROM reflecting upon the Courſe of theſe Impeachments, the following Obſervations ſeem naturally to ariſe.

That Impeachments are in themſelves proper and neceſſary Checks to arbitrary Miniſters; that they are the only Reſort very often that can be left open for honeſt Men to interpoſe in preventing the Ruin of their Country, and hindring the Prerogative of the Crown from proving fatal to it ſelf. Thus in the Caſe of the Earl of *Strafford*, the *King* him-

himself, tho' he could not give into the Proofs of his being guilty of High-Treason, yet owns him a Person *dangerous* to be employ'd, which he could never have known, but from the Evidence produced at his *Tryal*.

That Impeachments never call any Censure upon the Impeachers, but when they are carried on with Passion, Violence, and Personal Resentments, and that this way of Proceeding destroys the very End of Publick Justice. That there was not a little of this mixed in the Case of the Earl of *Strafford*, and that of the four Lords in King *William*'s Time.

That almost in every considerable and legal Impeachment since *Charles* the First, The giving *evil Advice* to the Prince has been the Foundation of the Accusations, and that has bore hardest upon the Persons accused. That it has been the constant Judgment of Parliaments, that the Royal Authority is not a sufficient Skreen from Publick Justice, and that all Appeals to that have been reckoned the highest Abuse of the Prerogative; as in the Case of the *Earl* of *Danby*, and others.

That the Differences which have happened between the two Houses of Parliament in the Course of Impeachments, have proceeded more from the Temper of som leading Men on each Side, than

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the Nature of Impeachments themſelves, which are capable of being carried on with Eaſe and Tranquility; and that therefore theſe Differences are no Diſcouragements to a juſt and well grounded Impeachment.

F I N I S.